

SENATE BILL REPORT

2SHB 2457

As of February 28, 2014

Title: An act relating to derelict and abandoned vessels.

Brief Description: Concerning derelict and abandoned vessels.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hansen, Smith, Fagan, Springer, Rodne, Reykdal, Magendanz, Fitzgibbon, Vick, Lytton, Wilcox, Pollet, Tharinger, Ryu, Van De Wege, Buys and Hayes; by request of Department of Natural Resources).

Brief History: Passed House: 2/17/14, 88-9.

Committee Activity: Natural Resources & Parks: 2/25/14, 2/27/14 [DPA-WM, w/oRec].
Ways & Means: 3/03/14.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pearson, Chair; Liias, Ranking Member; Dangel, Hargrove, Kline and Parlette.

Minority Report: That it be referred without recommendation.

Signed by Senator Hewitt.

Staff: Bonnie Kim (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

Background: The Department of Natural Resources (DNR) manages the Derelict Vessel Removal Program (DVRP) to remove and dispose of derelict or abandoned vessels up to 200 feet. DNR also manages the Derelict Vessel Removal Account (DVRA) which is funded by surcharges assessed at vessel registration, including a \$2 derelict vessel removal fee and a \$1 derelict vessel surcharge dedicated to removing larger boats.

Under the DVRP, an authorized public entity (APE), which includes most state and local owners of aquatic lands and shorelines, must satisfy certain notice requirements before taking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

custody of a derelict or abandoned vessel within its jurisdiction. Alternatively, an APE may request DNR to act in its place. Private marina owners may participate by contracting with a local APE. Once in custody, an APE must attempt to derive some value from the vessel in whole or scrap before it uses or disposes of the vessel in an environmentally sound manner.

The derelict or abandoned vessel owner is liable for all reasonable costs associated with vessel removal and disposal less any value derived by the APE prior to disposal. Reasonable costs may include costs related to environmental damage caused by the vessel. If the vessel owner is unknown or insolvent, DNR reimburses the APE for 90 percent of costs from the DVRA, with priority given to projects removing vessels presenting environmental risks or blocking navigation channels.

Beginning July 1, 2014, the owner of a registered vessel more than 40 years old and longer than 65 feet must obtain an inspection before transferring ownership to another party. The transferor must provide a copy of the inspection report to both the transferee and DNR prior to transfer. A transferor who fails these requirements may be held secondarily liable for costs if the vessel is later found abandoned or derelict.

Publicly owned vessels must be reviewed for seaworthiness and hazardous materials prior to transfer. Any vessel in an advanced state of deterioration must be repaired before sale or permanently dismantled. A buyer must provide the state or local entity processing the vessel transfer or sale with the buyer's planned use and intention for legal moorage.

Summary of Bill (Recommended Amendments): Vessel Transfers. Vessel inspections required for transfers after July 1, 2014, must be conducted by a third-party marine surveyor or by another form as determined by DNR. Vessel owners required to conduct a pre-sale inspection as of July 1, 2014, may not sell an unseaworthy vessel if the inspection reveals the vessel value to be less than the anticipated cost of repair. An owner may sell such a vessel only if it is returned to seaworthiness or sold for scrap, salvage, or restoration to a seaworthy state.

A purchaser or transferee of a vessel more than 40 years old and longer than 65 feet must secure marine insurance concurrent with completing the transfer. The policy must provide a term of at least 12 months, at least \$300,000 coverage, derelict removal coverage, and pollution event coverage. The buyer must provide proof of insurance to the seller and, if needed, to other state agencies. It is a misdemeanor to fail to secure marine insurance as required or to cancel a policy before the end of the requirement term. DNR may allow the buyer to post adequate security with a financial institution in lieu of the insurance requirement.

A vessel owner who sells or transfers either an unseaworthy vessel or to a transferee without marine insurance may be held secondarily liable if the transferee allows the vessel to become derelict or abandoned. Such a transferor may challenge secondary liability in superior court.

Marinas. A private moorage facility or marina owner may contract with either a local government APE or DNR for the removal of derelict or abandoned vessels, unless DNR determines otherwise. However, neither the local government APE nor DNR is required to enter into these contracts.

All marinas, both public and private, must maintain insurance policies with at least \$300,000 in general, legal, and pollution liability protection coverage. Marinas must also require all vessels moored at their facility to provide proof of insurance as a condition of moorage. Marinas are not required to verify liability coverage for mooring vessels. Failure to adhere to these requirements may render the marina secondarily liable for a vessel at the marina that becomes derelict or abandoned.

Any marina providing moorage for 30 days or more must obtain information from its tenant, including contact information, any applicable hull registration numbers, and either proof of vessel registration or a written statement of the owner's intent to register the vessel. The marina must retain the information for two years and share the information with the Department of Revenue (DOR), the Department of Licensing (DOL), or DNR upon request.

DOR, DOL, and DNR may inspect marinas for improperly registered vessels twice per year, collectively. DOR may assess a penalty if such vessels are also required to pay the watercraft excise tax. The penalty is \$100 for a first violation, \$200 for a second violation, and \$400 for any subsequent violations. A person who fails to register a vessel as required and avoids the watercraft excise is guilty of a gross misdemeanor and liable for unpaid taxes.

Tax Exemption. Beginning October 1, 2014, vessel deconstruction activities are exempt from the retail sales and use tax. The exemption applies to permitted deconstruction facilities and deconstruction activities only.

Commercial Vessel Fee. Beginning January 1, 2015, commercial vessels are subject to an annual fee at a rate of \$1 per vessel foot. DOR assesses the fee when property taxes become due and directs fee-specific revenue to the DVRA.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & PARKS COMMITTEE (Recommended Amendments): Changes the penalty for purchasers of vessels older than 40 years and longer than 65 feet who cancel marine insurance policies before the end of a 12-month term or a subsequent transfer from a gross misdemeanor to a misdemeanor. Adds as a misdemeanor a purchaser's failure to secure marine insurance as required by the act. Adds that sellers may transfer ownership of unseaworthy vessels for the purpose of restoration. Changes a requirement that vessels display proof of insurance as a condition of moorage to a requirement they provide a marina with proof of insurance. Clarifies that marinas are not required to verify liability coverage for mooring vessels. Reduces the new derelict vessel removal fee for commercial vessels from \$3 to \$1 per vessel foot. Makes technical corrections.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Substitute House Bill (Natural Resources & Parks): PRO: This bill is the result of significant research and stakeholder meetings. The bill does three things: speeds up the process of getting boats out of the water, prevents problem boats from falling into the hands of those who cannot handle the responsibility, and encourages owners to take boats at the end of their useful life to salvage and deconstruction. This bill is the result of a bipartisan and bicameral effort. There are still some issues surrounding insurance requirements and commercial fees. This bill eases the burden on recreational boaters and taxpayers and shares the cost burden of the derelict vessels program more equitably with commercial boaters. This bill addresses a widespread problem affecting Washington State. This bill might serve as a pioneering piece of legislation that could set the rule for other states struggling with this issue. The most costly vessels to clean and remove are those that come from a commercial background. Even small oil spills can have a devastating effect on the ecosystem. This bill will help work on the backlog of 150 vessels currently in danger of sinking. Most of the vessels dealt with by the state and paid for by recreational boaters and taxpayers are commercial vessels. Certain marinas already verify insurance coverage by vessel owners.

CON: Derelict vessels pose a danger to navigation in the state's waterways. However, the fee proposed by this bill unfairly targets corporate citizens. Corporate entities are already required to pay property tax, heavy insurance fees, business and occupation tax, and payroll tax. This bill would harm one of the state's core industries. There is support for the transfer regulations and marine insurance provisions. It is unclear that there is a connection between the proposed fee on commercial vessels and the damage caused by derelict vessels. There is a serious lack of equity between commercial and recreational vessels with regard to the proposed fee. Working commercial vessels often already carry substantial insurance policies to guard against abandoned, derelict, or damaged commercial vessels.

OTHER: There is concern with how to verify vessel insurance. There should be some recognition for self-insured owners. There is also concern with the need for secondary liability for boats in marinas. Derelict, abandoned, or sunken vessels are critical issues that need to be addressed as soon as possible. There may be issues with insurance for wooden boats.

Persons Testifying (Natural Resources & Parks): PRO: Representative Hansen, prime sponsor; Representative Smith; Doug Levy, Recreational Boating Assn. of WA; Todd Tarin, Citizens for a Healthy Bay; Naki Stevens, Sound Action; Kristin Swenddal, Melissa Ferris, DNR; Bruce Wishart, WA Environmental Council.

CON: Charles Costanzo, American Waterways Operators; Scott Hazlegrove, Pacific Merchant Shipping Assn.

OTHER: Gerry O'Keefe, WA Public Ports Assn.